

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

TERRANCE PAUL MCABEE, Movant, vs. UNITED STATES OF AMERICA, Respondent.	4:17-CV-04090-KES ORDER AND NOTICE OF POTENTIAL DISMISSAL
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On June 27, 2017, Terrance Paul McAbee, a federal prisoner currently incarcerated in the Federal Correctional Institution at Big Spring, Texas, filed his “Notice of Constitutional Challenge and Motion to Intervene with an Injunction.” Docket No. 1. Upon reviewing Mr. McAbee’s submissions it is unclear whether Mr. McAbee wishes to challenge his conviction with a habeas petition pursuant to 28 U.S.C. § 2255 or whether he intends to challenge the conditions of his confinement and seek money damages pursuant to 42 U.S.C. § 1983. He challenges the constitutionality of various statutes he was convicted under, which would be appropriate for a habeas action. Id. However, he apparently is seeking money damages, a form of relief not available in a habeas action.

A habeas action pursuant to § 2255 would be appropriately filed in this district. However, a § 1983 action for the recovery of money damages would

have to be filed in the Northern District of Texas where Mr. McAbee is incarcerated. Therefore, it is hereby

ORDERED that the clerk provide a blank 2255 form to Mr. McAbee. If Mr. McAbee wishes to pursue habeas relief pursuant to 28 U.S.C. § 2255, Mr. McAbee must complete and return the enclosed § 2255 form no later than September 15, 2017. It is further

ORDERED that if Mr. McAbee instead wishes to pursue money damages pursuant to 42 U.S.C. § 1983, he must so notify the court. Finally, it is hereby

ORDERED that if Mr. McAbee does not respond by September 15, 2017, by filing a completed § 2255 form or notifying the court he wishes to pursue money damages, his case will be dismissed.

DATED this 28th day of July, 2017.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge